It having been found that the Respondent discriminated in regard to the hire and tenure of employment of Norma DeRosia and Barbara Hall by discharging each of them on February 16, 1961, and thereafter not reinstating them, the Trial Examiner will recommend that the Respondent make each of them whole for any loss of pay she may have suffered by reason of said discrimination against her by payment to her of a sum of money equal to that which she would have earned as wages from the date of the discrimination against her to the date of her reinstatement less her net earnings during such period in accordance with the formula set forth in F. W. Woolworth Company, 90 NLRB 289.

It having further been found that on February 20, 1961, and at all times thereafter, Respondent has refused to bargain collectively with United Electrical, Radio and Machine Workers of America as the exclusive bargaining representative of Respondent's employees in the above-found appropriate unit, it will be recommended that the Possendent of the state o that the Respondent, upon request, bargain collectively with said Union as such

representative.

Because of the variety of the unfair labor practices engaged in by the Respondent, the Trial Examiner senses an attitude of opposition to the purposes of the Act in general, and hence the Trial Examiner deems it necessary to order that the Respondent cease and desist from in any manner infringing upon the rights guaranteed in Section 7 of the Act.

### CONCLUSIONS OF LAW

1. The United Electrical, Radio and Machine Workers of America is a labor

organization within the meaning of Section 2(5) of the Act.

2. By discharging Norma DeRosia and Barbara Hall on February 16, 1961, thereby discriminating in regard to their hire and tenure of employment and discouraging union activities among its employees, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(3) and (1) of the Act.

3. All production and maintenance employees of Respondent employed at its Greenfield plant, exclusive of office clerical employees, guards, professional employees, and all supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act 4. At all times since February 20, 1961, United Electrical, Radio and Machine Workers of America has been, and now is, the exclusive representative of all the employees in the aforesaid appropriate unit for the purposes of collective bargaining within the meaning of Section 9(a) of the Act.

5. By failing and refusing on, and at all times since, February 20, 1961, to bargain collectively with United Electrical, Radio and Machine Workers of America as the exclusive representative of the employees in the aforesaid unit, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

6. By interfering with, restraining, and coercing its employees in the exercise of rights guaranteed to them in Section 7 of the Act, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

[Recommendations omitted from publication.]

Local Union #469 of the United Association of Journeymen & Apprentices of the Plumbing & Pipe Fitting Industry of the United States & Canada, AFL-CIO [Hansberger Refrigeration & Electric Co.] and Independent Contractors Association. Case No. 28-CC-82 (formerly 21-CC-408). January 24, 1962

# DECISION AND ORDER

On June 29, 1961, Trial Examiner Howard Myers issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in unfair labor practices and recommending 135 NLRB No. 51.

that it cease and desist therefrom and take certain affirmative action, as set forth in the Intermediate Report attached hereto. Thereafter the General Counsel and Respondent filed exceptions to the Intermediate Report and supporting briefs.

The Board has reviewed the rulings of the Trial Examiner at the hearing and finds no prejudicial error. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions, the briefs, and the entire record in this case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner only to the extent consistent with the following modifications.

We agree with the Trial Examiner that the Respondent violated Section 8(b) (4) (i) and (ii) (B) by picketing at the construction site of the Hicks-Ponder factory as set forth in the Intermediate Report. In reaching this conclusion we note that the record in this case indicates that Respondent made no effort to organize the Hansberger employees, made no claim to represent them upon Hansberger, and made no request to that company for either negotiations or a contract. Respondent's so-called organizational activity was confined to jobsite picketing at a time when no employees of Hansberger were engaged in Hansberger's operations at the site but when employees of other employers were in attendance and during substantial periods of time when Hansberger also was not present and no Hansberger work was being performed. The record, moreover, is void of evidence that Respondent made any effort to ascertain whether Hansberger or his employees were engaging in Hansberger's normal operations when it commenced and later continued its picketing. Under these circumstances, we can only infer that an object of the appeals was the inducement of employees of other employers at the jobsite to cease work with the further object of requiring other employers to cease doing business Quite clearly such conduct violates Section with Hansberger. 8(b) (4) (i) and (ii) (B).1

The General Counsel also relied upon the fact that Hansberger had its principal place of business at Yuma where Respondent could have engaged in picketing without involving the employees of neutral employers in the dispute. Respondent answered that the situs of Hansberger's shop was such (located upon a private street about 100 yards from the public street) that picketing the plant would have been impractical. In view of our decision that Respondent's picketing at the Hicks-Ponder factory violated the Act, we find it unnecessary to reach this second contention of the General Counsel.

<sup>&</sup>lt;sup>1</sup> Sheet Metal Workers' International Association, Local Union No 3, AFL-CIO (Siebler Heating & Air Conditioning, Inc.), 133 NLRB 650; International Brotherhood of Electrical Workers, Local 861, AFL-CIO (Cleveland Construction Corp.), 134 NLRB 586; Roberts & Associates, 119 NLRB 962.

We also agree with the General Counsel that the recommendations of the Trial Examiner are not coextensive with the violations found, and we have amplified the Order and the notice accordingly.

# ORDER

Upon the basis of the entire record in this case, and pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Local Union #469 of the United Association of Journeymen & Apprentices of the Plumbing & Pipe Fitting Industry of the United States & Canada, AFL-CIO, its officers, agents, representatives, successors, and assigns, shall:

- 1. Cease and desist from:
- (a) Engaging in, or inducing or encouraging individuals employed by W. J. Anderson Construction Co., Inc., or any other person engaged in commerce or in an industry affecting commerce at the Hicks-Ponder factory site to engage in, a strike or a refusal in the course of their employment to perform services where an object thereof is to force or require W. J. Anderson Construction Co., Inc., or any other person to cease doing business with Hicks-Ponder Manufacturing Co., in order to force Hicks-Ponder Manufacturing Co. to cease doing business with Hansberger Refrigeration & Electric Co.
- (b) Threatening, coercing, or restraining W. J. Anderson Construction Co., Inc., or any other person engaged in commerce or in an industry affecting commerce at the Hicks-Ponder factory site where an object thereof is to force W. J. Anderson Construction Co., Inc., or any other person to cease doing business with Hicks-Ponder Manufacturing Co., in order to force Hicks-Ponder Manufacturing Co. to cease doing business with Hansberger Refrigeration & Electric Co.
- 2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:
- (a) Post at its offices and meeting halls at Yuma, Arizona, copies of the notice attached hereto marked "Appendix." Copies of said notice, to be furnished by the Regional Director for the Twenty-eighth Region, shall, after being duly signed by a representative of the Respondent Union, be posted immediately upon receipt thereof, and be maintained by it for a period of 60 consecutive days thereafter, in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by Respondent Union to insure that such notices are not altered, defaced, or covered by other material. Upon request of said Regional Director, Respondent Union shall supply him with a sufficient number of copies of said notices for posting by Independent Contractors Association, Hans-

<sup>&</sup>lt;sup>2</sup>In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be substituted for the words "Pursuant to a Decision and Order" the words "Pursuant to a Decree of the United States Court of Appeals, Enforcing an Order."

berger Refrigeration & Electric Co., W. J. Anderson Construction Co., Hicks-Ponder Manufacturing Co., Viking Sprinkling Company, or any other person, if they desire to do so, at the site which was involved in this proceeding.

(b) Notify the Regional Director for the Twenty-eighth Region, in writing, within 10 days from the date of this Order, what steps have been taken to comply herewith.

MEMBERS FANNING and Brown took no part in the consideration of the above Decision and Order.

# APPENDIX

NOTICE TO ALL MEMBERS OF LOCAL UNION #469 OF THE UNITED ASSOCIATION OF JOURNEYMEN & APPRENTICES OF THE PLUMBING & PIPE FITTING INDUSTRY OF THE UNITED STATES & CANADA, AFL-CIO

Pursuant to a Decision and Order of the National Labor Relations Board, and in order to effectuate the policies of the Labor Management Relations Act, we hereby give notice that:

We will not engage in or induce or encourage the employees of W. J. Anderson Construction Co., Inc., or any other person to engage in a strike or in a refusal in the course of their employment to perform any service for their respective employers, where an object thereof is to force W. J. Anderson Construction Co., Inc., or any other person to cease doing business with Hicks-Ponder Manufacturing Co., in order to force Hicks-Ponder Manufacturing Co., or any other person to cease doing business with Hansberger Refrigeration & Electric Co.

We will not threaten, coerce, or restrain W. J. Anderson Construction Co., Inc., or any other person engaged in commerce or in an industry affecting commerce, where an object thereof is to force W. J. Anderson Construction Co., Inc., or any other person to cease doing business with Hicks-Ponder Manufacturing Co. in order to force Hicks-Ponder Manufacturing Co. to cease doing business with Hansberger Refrigeration & Electric Co.

LOCAL UNION #469 OF THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING & PIPE FITTING INDUSTRY OF THE UNITED STATES & CANADA, AFL—CIO,

Labor Organization.

Dated\_\_\_\_\_\_By\_\_\_\_\_\_(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

Employees may communicate directly with the Board's Regional Office (1015 Tijeras Street NW., Albuquerque, New Mexico; Telephone Number, 243–3536) if they have any question concerning this notice or compliance with its provisions.

# INTERMEDIATE REPORT AND RECOMMENDED ORDER

## STATEMENT OF THE CASE

Upon a charge duly filed on February 27, 1961, by Independent Contractors Association, herein called the Association, the General Counsel of the National Labor Relations Board, herein respectively called the General Counsel<sup>2</sup> and the Board, through the Regional Director for the Twenty-first Region,<sup>3</sup> issued a complaint, dated March 27, against Local Union #469 of the United Association of Journeymen & Apprentices of the Plumbing & Pipe Fitting Industry of the United States & Canada, AFL-CIO, herein called Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(b)(4)(i) and (ii)(B) and Section 2(6) and (7) of the National Labor Relations Act, as amended from time to time, 61 Stat. 136, herein called the Act.

Copies of the charge and complaint, together with notice of hearing thereon, were duly served upon Respondent and copies of the complaint and notice of hearing were duly served upon the Association.

On April 12, Respondent duly filed an answer denying the commission of the

unfair labor practices alleged.

Pursuant to due notice, a hearing was held on April 18 and 19, at Yuma, Arizona, before the duly designated Trial Examiner. The General Counsel and Respondent were represented by counsel and the Association by a representative thereof. All parties were afforded full and complete opportunity to be heard, to examine and cross-examine witnesses, to introduce evidence pertinent to the issues, to argue orally at the conclusion of the taking of the evidence, and to file briefs on or before May 24.4 A brief has been received from Respondent's counsel which has been carefully considered.

Upon the entire record in the case and from his observation of the witnesses, the

Trial Examiner makes the following:

### FINDINGS OF FACT

## I. THE BUSINESS OPERATIONS OF THE EMPLOYERS INVOLVED

Hicks-Ponder Manufacturing Co., herein called Hicks, with plants at El Paso and Del Rio, Texas, is engaged in the manufacture and distribution of shirts and other articles of clothing. Hicks annually ships to points located outside the State

of Texas clothing valued at substantial amounts.

W. J. Anderson Construction Co., Inc., herein called Anderson, is engaged at Yuma, Arizona, as a general building contractor. During all times material herein, Anderson was engaged in, pursuant to a contract with Hicks, the construction of a shirt factory at Yuma, Arizona. Anderson annually receives supplies and materials originating from outside the State of Arizona in substantial amounts. During the 12-month period immediately prior to the opening of the hearing herein, Anderson's out-of-State purchases of goods and materials amounted to approximately \$10,000. During 1960, Anderson purchased materials and supplies from O'Malley-Smith Lumber Co., a Yuma, Arizona, lumber and material concern, amounting to \$10,-583.04. Approximately 92 percent of said merchandise was shipped directly to O'Malley-Smith from points located outside the State of Arizona.

At all times material herein Hansberger Refrigeration & Electric Co., a partnership composed of Edwin L. and J. Kenneth Hansberger and herein called Hansberger, a Yuma, Arizona, refrigeration electrical contractor, was engaged in the installation of refrigeration equipment at the Hicks' Yuma shirt plant. The cost of this work to Hicks will amount to approximately \$26,000, including interest. Hansberger's 1960 direct out-of-State purchases amounted to \$42,556.02. During the same period, Hansberger purchased materials from Mohawk Wholesale & Equipment Co., a Yuma, Arizona, plumbing and electrical supply company, valued at \$16,172.26 of which amount \$14,172 was shipped directly to Mohawk from points located outside the State of Arizona. During 1960 and the forepart of 1961, Hansberger did installation work for the Federal Aviation Agency, a national defense agency, amounting to approximately \$20,500.

On the basis of the foregoing facts, the Trial Examiner finds, in line with established Board authority, that the employers here involved are engaged in, and during

<sup>1</sup> Unless otherwise noted, all dates herein mentioned refer to 1961.

<sup>&</sup>lt;sup>2</sup> This term specifically includes counsel for the General Counsel appearing at the hearing.

<sup>3</sup> This proceeding has been transferred to the newly created Twenty-eighth Region

<sup>4</sup> At the request of Respondent's counsel, the time to file briefs was extended to June 5.

all times material were engaged in, business affecting commerce within the meaning of the Act and that their combined operations meet the standard fixed by the Board for the assertion of jurisdiction.

#### II. THE LABOR ORGANIZATION INVOLVED

Respondent is a labor organization admitting to membership employees of Hansberger.

#### III. THE UNFAIR LABOR PRACTICES

## A. The pertinent facts

About December 2 or 3, 1960, Anderson, pursuant to a written contract with Hicks, commenced the erection of a \$75,000 shirt factory in Yuma, Arizona, for Hicks. Among the subcontractors were Viking Sprinkling Company, Philco Plumbing, Butler Roofing and Installation Company, and E. T. Williams.

Hansberger had a 5-year lease and maintenance contract with Hicks for refrigeration of the new shirt factory. This contract amounts to about \$26,000, including

interest over the aforesaid 5-year period.

At about noon on February 20, 1961, while Hansberger was engaged in performing the Hicks' contract, Respondent placed a picket at the jobsite in question carrying a sign to the effect that Respondent desired to organize and bargain with Hansberger for Hansberger's employees.

Almost immediately after Anderson's superintendent saw the picket, he left the job; his crew followed him. About the same time, the two employees of Viking also left the job. There were no Hansberger employees on the job when the picket-

ing commenced.

On February 21 or 22, a truckdriver of Trigg arrived at the jobsite with a load of concrete ready-mix for Hansberger. The driver refused to cross the picket line and so informed Trigg by telephone. Trigg then went to the jobsite and drove the truck onto the job and unloaded the concrete.

About 4 p.m. on February 23, the picket was removed. During picketing no one worked on the Hicks' job except J. Kenneth Hansberger, a Hansberger partner, who only did some occasional necessary work.

At no time did Respondent picket Hansberger's premises, where its employees come and go each day, and where the employees do much of their work. In fact, the record is devoid of any evidence that Respondent made any effort to contact Hansberger's employees. In addition, the record discloses that the last time any Respondent representative called upon Hansberger seeking recognition was about a year prior to the opening of the hearing herein.

#### B. Concluding findings

In relevant part, Section 8(b)(4)(A) of the Act makes it an unfair labor practice for a labor organization or its agents "to induce or encourage the employees of any employer to engage in . . . a concerted refusal in the course of their employment . . . to perform any services, where an object thereof is . . . forcing or requiring . . . any employer . . . to cease doing business with any other person." The facts detailed above show that Respondent's dispute was with Hansberger; that Hansberger had a facility which Respondent could picket without implicating neutral employers; but, that, nevertheless, Respondent picketed a construction site quite some distance from Hansberger's premises, and as a result the employees of certain neutral employers were induced to stop work.

Since Respondent had adequate opportunity to appeal to Hansberger's employees by the ordinary methods traditionally resorted to by unions to organize workers, it completely abstained from using those methods. It is thus fair to conclude, which the Trial Examiner does, that Respondent's motive, at least in part, in picketing the Hicks' jobsite, was to bring its dispute with Hansberger to the attention of the employees working on the Hicks' job so as to obtain their aid. This is especially true since all the employees of the neutral employers here involved refused to cross, or work behind, Respondent's picket line.<sup>5</sup>

<sup>5 &</sup>quot;As conducted here [the picketing] constituted an appeal for solidarity of a nature implying both a promise of benefit and a threat of reprisal. The reluctance of workers to cross a picket line is notorious. To them the presence of the line implies a promise that if they respond by refusing to cross it, the workers making the appeal, will in turn cooperate if need arises. The converse, likewise, is implicit." Printing Specialties and Paper

Upon the entire record in the case, the Trial Examiner finds that an object of Respondent's picketing was (1) to force or require the secondary employers to cease doing business with Hansberger; (2) force or require the secondary employers to cease doing business with Hicks in order to force Hicks to cease doing business with Hansberger; and (3) force or require Hicks to cease doing business with Hansberger, thereby violating Section 8(b)(4)(1) and (11)(B) of the Act.

# IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with the operations of the employers here involved, as set forth in section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and, such of them as have been found to constitute unfair labor practices, tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

#### V. THE REMEDY

Having found that Respondent has violated Section 8(b)(4)(i) and (ii)(B) of the Act, it will be recommended that it be ordered to cease and desist therefrom and that it take certain affirmative action designed to effectuate the policies of the Act.

Upon the basis of the foregoing findings of fact, and upon the entire record in

the case, the Trial Examiner makes the following:

#### Conclusions of Law

1. Hicks, Anderson, Trigg, and Hansberger are, and during all times material have been, employers engaged in commerce and in an industry affecting commerce within the meaning of Section 2(6) and (7) of the Act.

2. Respondent is, and during all times material was, a labor organization within the meaning of Section 2(5) of the Act.

3. By engaging in, and inducing and encouraging employees of other employers to engage in a strike and other concerted refusals to handle goods or services of Hansberger, or threatening, coercing, or restraining a person in an industry affecting commerce, by picketing or otherwise, with an object of forcing him to cease doing business with another, Respondent has engaged in unfair labor practices within the meaning of Section 8(b)(4)(1) and (ii)(B) of the Act.

4. The aforesaid unfair labor practices are unfair labor practices within the mean-

ing of Section 2(6) and (7) of the Act

### [Recommendations omitted from publication.]

Converters Union, Local 388, AFL (Sealright Pacific, Ltd ) v. Le Baron, 171 F. 2d 331, 334 (CA 9) See also N L R B. v Denver Building and Construction Trades Council, et al (Gould & Preisner), 341 U.S. 675; Stover Steel Service v. N L R B, 219 F. 2d 879 (C A 4)

International Brotherhood of Electrical Workers, Local 861, AFL-CIO [Ace Electric Company] and Wilmer J. Milam. Case No. 15-CB-482. January 24, 1962

# DECISION AND ORDER

On November 8, 1960, Trial Examiner C. W. Whittemore issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the Intermediate Report attached hereto. Thereafter, the Respondent filed exceptions to the Intermediate Report.

135 NLRB No. 44.